



MORRISON & FOERSTER LLP

INTERNET PAYMENTS OVERVIEW

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January 19, 2002

PARTICIPANTS

- **Person to Merchant (PtoM)**
- **Person to Person (PtoP)**

METHODS OF PAYMENT

- **Credit Cards**
- **Debit Cards**
- **Stored Value/Prepaid**
- **Electronic Checks**
- **E-mail Money**

PAYMENT PROVIDERS

- **Depository financial institutions (“Banks”)**
- **Money transmitters**
- **Escrow companies**
- **Others**

CREDIT CARDS

- **Credit cards are issued by banks**
- **Consumer credit extensions are governed by TiLA**
- **Card association rules (e.g., Visa® and MasterCard® rules) also apply**

CREDIT CARDS

- **Most popular method of payment**
- **Accepted by almost all merchants**
- **Real-time authorization**
- **Consumer charge-back rights**
- **Consumer limited liability for unauthorized use**
- **Dispute resolution process**

CREDIT CARDS

- **BUT:**
 - expensive for merchants
 - interchange fees
 - merchant must be sponsored by a bank to accept credit cards
 - no person-to-person payments
 - many small internet business (e.g., auction sellers) not sponsored
 - master merchant

CREDIT CARDS

- delayed payment finality
 - may be a plus for consumers but not for merchants
- prone to fraud
 - merchant liable for “card not present” transactions

DEBIT CARDS

- **PIN-based debit cards not yet popular**
 - a typical ATM card is a PIN-based debit card
 - may be issued by banks or non-banks
 - EFTA applies
 - technology for use on internet is evolving

DEBIT CARDS

- **“Check cards” (non PIN-based) can be used like a credit card except that funds are debited from a checking account**
 - cards typically carry a Visa or MasterCard logo
 - issued by banks
 - EFTA applies
 - card association rules also apply

DEBIT CARDS

- **Check cards are accepted by most merchants**
- **Real-time authorization**
- **Consumer limited liability for unauthorized use**
- **Dispute resolution process**

DEBIT CARDS

- **BUT:**
 - expensive for merchants
 - interchange fees
 - merchant must be sponsored by a bank to accept “check” cards
 - no person-to-person payments
 - many small internet business (e.g., auction sellers) not sponsored
 - master merchant

DEBIT CARDS

- delayed payment finality
 - may be a plus for consumers but not for merchants
- prone to fraud
 - merchant liable for “card not present” transactions

STORED VALUE

- **Variety of models**
 - value on a card (smart card) -- e.g., Mondex
 - card accesses aggregate account in name of issuer
 - operates much like debit card but no “account” in consumer’s name
 - may be issued by bank or non-bank
 - if issued by bank, probably issued as a Visa or MasterCard --e.g. Visa Buxx

ELECTRONIC CHECKS

- **Consumer supplies bank routing and transit numbers, account number and authorization to electronically debit consumer's bank account**
- **Merchant can directly offer electronic check**
- **Third party can offer electronic check -- e.g., Western Union MoneyZap**

ELECTRONIC CHECKS

- **Typically uses Automated Clearing House network**
 - a bank is involved, but may not be the party offering the service
 - National Automated Clearing House Association (“NACHA”) rules apply
- **EFTA applies, not UCC**
- **Money transmitter rules probably apply**

ELECTRONIC CHECKS

- **Relatively inexpensive for merchants**
- **No real-time authorization**
- **Consumer limited liability for unauthorized use**
- **Dispute resolution process**
- **Person-to-person and person-to-merchant payments**

E-MAIL MONEY

- consumer has “account” with non-bank payments provider -- e.g., PayPal
 - no card access
 - instructions for payment provided over internet
 - “account” must be prefunded
 - payments provider may pay interest on prefunded “account”

WHAT PAYMENT LAW APPLIES?

- **Truth in Lending Act - Fair Credit Billing Act (“TiLA”)**
- **Electronic Fund Transfer Act (“EFTA”)**
- **Uniform Commercial Code (“UCC”)**
- **None**

EFTA

- **Does EFTA apply?**
 - requires that funds be electronically debited or credited to a consumer account
 - is the consumer's interest in an aggregated account in the name of the payment provider a "consumer account"?
 - see 1996 Federal Reserve Board proposed rule at 61 Fed. Reg. 19,696

EFTA

- is the consumer's "account" at a payment provider such as PayPal an EFTA account?

DEPOSITS

- **Are stored value payment providers banks?**
 - accepting deposits as defined in the Glass-Steagall Act and various state laws?

MONEY TRANSMITTERS

- **Are E-mail Money payment providers money transmitters?**
 - if not banks, what else could they be?
 - but -- state laws vary so payment provider may be covered by a money transmitter licensing scheme in one state but not another
 - Bank Secrecy Act registration, record-keeping and reporting requirements

WHAT LICENSING SCHEME APPLIES?

- **Bank**
 - does the payment method involve an “account”?
 - is the account a deposit?
 - only banks can accept deposits
 - Glass-Steagall Act, 12 USC §378(a)(1)
 - Cal. Fin. Code §§102, 3390

WHAT LICENSING SCHEME APPLIES?

- **Money Transmitter**
 - receiving money or monetary value for transmission
 - state laws vary
 - e.g., California law only applies to transmission of money abroad but Texas believes its check sellers law applies to electronic transactions
 - proposed Uniform Money Services Act
 - Bank Secrecy Act

WHAT LICENSING SCHEME APPLIES?

- **Escrow**
 - e.g., money or monetary value is held pending the happening of a particular event
 - interplay between money transmitter and escrow company
- **None**

OTHER ISSUES

- **When is consumer's underlying obligation discharged?**
- **What happens to "accounts" if payment provider goes out of business?**
- **Deposit insurance**
- **Escheat**